IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 8.10.2007

Sukhwinder Singh **...Petitioner**

VERSUS

Harbans Singh and another **…Respondents**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.R.D.Bawa, Advocate for the petitioner

Permod Kohli, J. (Oral)

This Revision Petition is directed against the order dated 18.8.2007 passed by the Civil Judge (Senior Division), Sangrur allowing application under Order 9 Rule 13 of the CPC for setting aside the ex parte judgment and decree dated 2.2.1996. The dispute is between father and the son. Petitioner is the son of respondent filed a suit for declaration claiming his right over the land in question. The trial court passed an ex parte decree on 2.2.1996 against the respondent/defendant in the suit. Respondent/defendant filed an application on 10.8.2004 for setting aside the ex-parte decree on the ground that he was shunted out of the village by his son in badly ill condition, in the month of November, 1992 and he is

residing at Patiala with his daughter. Petitioner herein never visited to see him at Patiala. He has also made allegation that he was threatened that he will be killed if he enters village Sohian, Tehsil and District Sangur. He also stated that he was never served with any summons in the suit and the decree has been obtained by plaintiff by misrepresentation and fraud upon the court. This application was resisted by the present petitioner- decree holder on the ground that the application is barred by time and the applicant/respondent herein is estopped to challenge the ex-parte judgment and decree by his own conduct. The allegations of maltreatment and that the applicant was residing at Patiala were also denied. After recording the evidence of the parties, the trial court found that the applicant (defendant to the suit) was never served in the suit. The trial court has referred to interlocutory orders passed in the suit. It has been noticed that on 19.9.1994 while passing ex parte order, defendant was ordered to be summoned for 26.9.1994. The Presiding Officer was on leave and the case was adjourned for the service of defendant for 21.10.1994. On the said date, inter locutory order records defendant not served and he be again served through Munadi for 3.12.1994. It appears that the defendant was served through Munadi and consequently ex parte decree came to be passed on 2.2.1996. The trial court found that the defendant was never served in the suit. Service by Munadi is a substituted service and there was no report of the process serving agency that the defendant is avoiding the service. On the basis of the record, the trial court found that there was no valid or proper service of the

defendant which resulted in passing of the ex parte decree. On the question of limitation also, it was held that where the summons are not duly served, the limitation commences from date of knowledge and the application was treated within time. Petitioner- decree holder also tried to establish before the trial court that the defendant/applicant attended marriage of his grand daughter in the village during that period. Land measuring 1 bigha 10 biswa was sold for a consideration of Rs.75,000/- and defendant/applicant was witness to the sale deed executed by Harjinder Singh, the plaintiff in the suit. It is accordingly argued that the defendant/applicant had the knowledge of the decree. This contention has also been considered by the trial court and it has been opined that signature on the sale deed does not in any manner establish that he had the knowledge of the decree.

I have heard the learned counsel for the petitioner and perused the impugned judgment. It is admitted position on record that the defendant/non-applicant was never served in the suit. The service was only through Munadi without there being any report of process serving agency that he avoided the service. The defendant/applicant also alleged that he was residing at Patiala at the relevant time and the address in the suit was wrongly given so as to mislead the court. Be that as it may, the fact remains that defendant was never served in the suit in accordance with law. Under these circumstances, knowledge of passing of the decree cannot be imputed to the defendant. Consequently, the limitation would also start from the date of knowledge when summons are served. I do not find any

legal or factual infirmity in the impugned judgment.

In view of the above, I find no merit in this revision petition which is accordingly dismissed in limine.

(PERMOD KOHLI)
JUDGE

8.10.2007
MFK

NOTE:Whether to be referred to Reporter or not:YES/NO